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Security Council

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Resolution 1897 (2009)

Adopted by the Security Council at its 6226th meeting, on 30 November 2009

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), and 1851 (2008),

Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law and the extended range of the piracy threat into the western Indian Ocean,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the limited capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,

Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letters of 2 and 6 November 2009 from the Permanent Representative of Somalia to the United Nations expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolutions 1846 (2008) and 1851 (2008) be renewed for an additional twelve months,

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Commending the efforts of the EU operation Atalanta, which the European Union is committed to extending until December 2010, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia,

Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution, *reiterating* that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, and *stressing* the need for States to criminalize piracy under their domestic law and to favourably consider the prosecution, in appropriate cases, of suspected pirates, consistent with applicable international law,

Commending the Republic of Kenya's efforts to prosecute suspected pirates in its national courts, and *noting* with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia ("CGPCS"), to support Kenya, Somalia and other States in the region, including Seychelles and Yemen, to take steps to prosecute or incarcerate in a third state after prosecution elsewhere captured pirates consistent with applicable international human rights law,

Noting the ongoing efforts within the CGPCS to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities, to incarcerate convicted pirates consistent with applicable international human rights law,

Welcoming the adoption of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and the establishment of the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund- Japan initiated), as well as the International Trust Fund Supporting Initiatives of the CGPCS, and *recognizing* the efforts of signatory States to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy

and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;

2. *Notes* again its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and calls upon all States to fully cooperate with the Monitoring Group on Somalia;

3. *Renews* its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

4. *Commends the work* of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and *urges* States and international organizations to continue to support these efforts;

5. *Acknowledges* Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and *calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;

6. *Invites* all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;

7. *Encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in

the fight against piracy and armed robbery at sea, and *decides* that for a period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008) granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been renewed only following the receipt of the 2 and 6 November 2009 letters conveying the consent of the TFG;

9. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraphs 5 above which have *been exempted* from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. *Calls on* Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. *Calls upon* all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. *Commends* in this context the decision by the CGPCS to establish an International Trust Fund to support its initiatives and *encourages* donors to contribute to it;

14. *Urges* States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

15. *Welcomes* the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, and *urges* States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

16. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

17. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

18. *Requests* the Secretary General of the IMO to brief the Security Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

20. *Decides* to remain seized of the matter.